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SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 1049/LA4A/76. *Dated, Trivandrum, 2nd February 1976.*

The Prisons Laws (Amendment) Bill, 1976 together with the Statement of Objects and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 67 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

DR. R. PRASANNAN,
Secretary,
Legislative Assembly.

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33/379/MC.

Fourth Kerala Legislative Assembly

Bill No. 237

THE PRISONS LAWS (AMENDMENT) BILL, 1976

A

BILL

further to amend the Prisons Act, 1894, in its application to the State of Kerala, and the Travancore-Cochin Prisons Act, 1950.

Preamble.—WHEREAS it is expedient further to amend the Prisons Act, 1894, in its application to the State of Kerala, and the Travancore-Cochin Prisons Act, 1950;

Be it enacted in the Twenty-seventh Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Prisons Laws (Amendment) Act, 1976.

(2) It shall be deemed to have come into force on the 10th day of October, 1972.

2. *Amendment of Central Act 9 of 1894.*—In section 59 of the Prisons Act, 1894 (Central Act 9 of 1894), as in force in the Malabar district referred to in sub-section (2) of section 5 of the States Re-organisation Act, 1956 (Central Act 37 of 1956), after the words "The State Government may make rules consistent with this Act", the words "either prospectively or retrospectively" shall be inserted.

3. *Amendment of Travancore-Cochin Act, XVIII of 1950.*—In section 59 of the Travancore-Cochin Prisons Act, 1950 (XVIII of 1950), after the words "Government may make rules consistent with this Act", the words "either prospectively or retrospectively" shall be inserted.

4. *Validation.*—Notwithstanding anything contained in any law for the time being in force, or in any judgment, decree or order of any court, the amendment purporting to have been made in rule 67 of the Kerala Prisons Rules, 1958, with retrospective effect from the 11th day of December, 1959, by notification G. O. (MS) No. 153/72/Home dated the 10th October, 1972, published as S. R. O. No. 536/72 in the Kerala Gazette No. 42 dated the 24th October, 1972, shall be deemed to have been made under section 59 of the Prisons Act, 1894 (Central Act 9 of 1894) and section 59 of the Travancore-Cochin Prisons Act, 1950 (XVIII of 1950), as amended by this Act, and

accordingly, no appointment or promotion to the grade of Jailor, Deputy Jailor or Assistant Jailor in the Jails Department of the Government, of any person who had not passed the Jail Officers' Test before such appointment or promotion, made or purporting to have been made on or after the 11th day of December, 1959 and before the date of publication of this Act in the Gazette, shall be deemed to be invalid or ever to have been invalid merely on the ground that such person had not passed the said test before such appointment or promotion as required by rule 67 of the Kerala Prisons Rules as originally made, and no such appointment or promotion shall be called in question in any court on the said ground.

5. *Repeal and saving.*—(1) The Kerala Prisons Laws (Amendment) Ordinance, 1975 (14 of 1975), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Prisons Act, 1894 and the Travancore-Cochin Prisons Act, 1950, as amended by the said Ordinance, shall be deemed to have been done or taken under the said Acts as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

Rule 67 of the Kerala Prisons Rules, 1958, provided that no person, whether an officer of the Department or not, shall be eligible for appointment to the grade of Jailor, Deputy Jailor or Assistant Jailor, unless he has previously passed the Jail Officers' Test and possesses the general educational qualifications prescribed by Government from time to time. The Kerala Jail Subordinate Service (Special Rules) were issued on 11-12-1959 under the proviso to article 309 of the Constitution of India to regulate the recruitment and conditions of service of persons appointed to the Jail Subordinate Service. According to rule 9 of these rules, Deputy Jailors, including Jailors in Special Sub-Jails, Assistant Jailors etc. have to pass the Jail Officer's Test within the period of probation unless they have already passed the test. When these rules were issued, rule 67 of the Kerala Prisons Rules, 1958, was inadvertently not suitably amended.

2. In a common judgment in O. P. No. 3878/69 and O. P. No. 3905/69, the High Court held that rule 67 of the Kerala Prisons Rules would prevail over the Special Rules. In view of the decision of the High Court, the appointments and promotions to the categories of Jailors, Deputy Jailors and Assistant Jailors which were made in accordance with the Special Rules, became irregular.

3. To regularise the appointments and promotions made to the said categories of posts, the Government, in exercise of the powers

conferred by section 59 of the Travancore-Cochin Prisons Act, 1950 (XVIII of 1950) and section 59 of the Prisons Act, 1894 (Central Act 9 of 1894) as in force in the Malabar area of the State, amended rule 67 of the Kerala Prisons Rules, 1958, by issuing notification No. G. O. (MS) 153/72/Home dated the 10th October, 1972, with retrospective effect from the 11th December, 1959, i.e. the date of introduction of the Special Rules for the Kerala Jail Subordinate Service, to bring it on the lines of the provisions in the Special Rules. This retrospective amendment to rule 67 of the Kerala Prisons Rules was challenged in the High Court in writ petition No. 5437 of 1972 by some Warders of the Jails Department. In its judgment in the said O. P., the High Court held that the amendment was invalid to the extent retrospectivity was given to it. The amendment was, however, held to be valid as a prospective rule.

4. As the rule making provisions contained in the Prisons Act, 1894 (Central Act 9 of 1894) and Travancore-Cochin Prisons Act, 1950, did not expressly confer on the Government the power to make rules retrospectively, it was considered necessary to amend the said Acts so as to enable the Government to make rules retrospectively and to give retrospective effect to the amendments from the 10th October, 1972, for validating the retrospective amendment made to rule 67 of the Kerala Prisons Rules by Notification No. G. O. (MS) 153/72/Home dated the 10th October, 1972.

5. As the Legislative Assembly was not in session and as the matter was of an urgent nature, the Kerala Prisons Laws (Amendment) Ordinance, 1975 (14 of 1975) was promulgated by the Governor on the 25th October, 1975, to achieve the above object. The Bill seeks to replace the Ordinance by an Act of the Legislature.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any expenditure from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 2 of the Bill seeks to amend section 59 of the Prisons Act, 1894 (Central Act 9 of 1894), for the purpose of empowering the Government to make rules with retrospective effect. Clause 3 of the Bill seeks to make a similar amendment to section 59 of the Travancore-Cochin Prisons Act, 1950 (XVIII of 1950). The delegation of legislative power is of a normal character.

R. BALAKRISHNA PILLAI.